LUTPI IBRAHIM & ANOR *a*

v.

KETUA POLIS NEGARA

HIGH COURT MALAYA, KUALA LUMPUR *b*
CHIN FOOK YEN J
[CRIMINAL APPLICATION NO: 44-52-1997]
20 DECEMBER 1997

PREVENTIVE DETENTION: *Detention - Whether lawful - Detention for more than thirty days - Reporting circumstances of detention to police officer designated by inspector-general - Whether police officer designated properly - Proof of police officer's appointment - Whether certified true copy of designation of police officer must be in accordance with s. 76 Evidence Act 1950 - Certified true copy not dated - Whether admissible - Whether detention wrongful - Internal Security Act 1960, s. 73(3)(c)* *c* *d*

EVIDENCE: *Documentary evidence - Certified true copy - Whether must be dated - Whether inadmissible if not dated - Evidence Act 1950, s. 76*

This was an application by the applicants for a writ of *habeas corpus* directed against the respondent in his official capacity as the Inspector-General of Police, Malaysia ('IGP'). The applicants, at the material time, were detained by the respondent under s. 73 of the Internal Security Act 1960 ('the ISA'). The applicants submitted that the certified true copy of the designation of the police officer by the IGP ('exh. SP1') was inadmissible as it was not properly certified in accordance with s. 76 of the Evidence Act 1950 in that the certificates were not dated. It was argued that if exh. SP1 was inadmissible then s. 73(3)(c) had not been complied with and there would be a breach, resulting in the detention being unlawful. The only issue before the court was whether the police officer concerned was a designated officer as required by s. 73(3)(c) of the ISA. *e* *f* *g*

Held:

[1] Section 76 of the Evidence Act 1950 is clear and it requires exh. SP1 to be dated, in the absence of which it is inadmissible as a certified copy.

[2] In view of the inadmissibility of exh. SP1, it has not been proved beyond a reasonable doubt that the police officer concerned was a designated officer as stated under s. 73(3)(c) of the ISA. *h*

[Application allowed.]

i

Case(s) referred to:

Ng Hong Choon v. Timbalan Menteri Hal Ehwal Dalam Negeri & Anor [1994] 4 CLJ 47 ***(foll)***

Legislation referred to:

Criminal Procedure Code, s. 425
Evidence Act 1950, ss. 76, 114(e)
Internal Security Act 1960, ss. 73

For the accused - Karpal Singh (Gobind Singh Deo with him); M/s Karpal Singh & Co
For the respondent - Abdul Alim Abdullah DPP (Mohd Abazafree Mohd Abbas DPP with him)

Reported by Ling Hea Hoon & S Dharmendran

JUDGMENT

Chin Fook Yen J:

By notice of motion filed in this court, both the applicants applied for a writ of *habeas corpus* to issue directed to the respondent in his official capacity as Inspector-General of police, Malaysia.

The facts may be briefly stated as follows: It was not in dispute that between 2 November 1997 and 7 November 1997 both the applicants were among others arrested and detained by the respondent. On 25 November 1997 counsel for applicants by letter sought permission of the respondent to visit the applicants, but in vain. The respondent by letter dated 28 November 1997 confirmed the arrest and detention of the applicants under s. 73 of the Internal Security Act 1960 (hereinafter referred to as ISA) and stated the reason that the matter was still under investigation in refusing the request of the counsel. Due to constraint of time and expense, the wife of the first applicant affirmed an affidavit in support of the application for both the applicants. In her affidavit encl. 4, altogether eight grounds were advanced to impugn the legality of the arrest and detention of the applicants. There is no necessity for the court to go over all the eight grounds, because somewhere towards the end of his submission, counsel for the applicants abandoned all, but one of the grounds in support of the application and the ground is that there has been a breach of the provisions of s. 73(3)(c) ISA which reads:

> Section 73. **Power to detain suspected persons**
>
> (1) ...
>
> (2) ...
>
> (3) Any person arrested under this section may be detained for a period not exceeding sixty days without an order of detention having been made in respect of him under s. 8:
>
> Provided that:

(a) ...

(b) ...

(c) he shall not be detained for more than thirty days unless a police officer of or above the rank of deputy superintendent has reported the circumstances of the arrest and detention to the inspector-general or to a police officer designated by the inspector-general in that behalf, who shall forthwith report the same to the minister.

In particular, he submitted that exhs. "SP1" in respect of both the applicants, viz, the designation power under s. 73(3)(c) ISA by inspector-general of police were inadmissible as they were not properly certified in accordance with s. 76 of Evidence Act 1950 in that the certificates were not dated.

Section 76 of Evidence Act 1950 reads:

Section 76. **Certified copies of public documents.**

Every public officer having the custody of a public document which any person has a right to inspect shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate, written at the foot of the copy, that it is a true copy of the document or part thereof, as the case may be, and the *certificate shall be dated* and subscribed by the officer with his name and his official title, and shall be sealed whenever the officer is authorised by law to make use of a seal, and the copies so certified shall be called certified copies. (emphasis added)

It should follow, he continued, that if the exh. "SP1" is ruled inadmissible, then s. 73(3)(c) ISA has not been complied with and there would be a breach, resulting the detention being unlawful.

The issue, therefore, is whether the police officer concerned was such designated officer as required by s. 73(3)(c) ISA.

In reply, counsel for the respondent submitted that even if exh. "SP-1" were inadmissible, the said police officer has in his affidavits encl. 16 and encl. 10, affirmed that he was "seorang pegawai yang di tetapkan oleh ketua polis negara mengikut peruntukan di bawah s. 73(3)(c) Akta Dalam Negeri 1960 untuk menerima laporan atas keadaan penangkapan dan penahanan orang yang ditangkap di bawah s. 73(1) AKDN 1960 dan melaporkan perkara yang sama kepada menteri dalam negeri Malaysia.

That exh. "SP1" in each case has been so certified as true copy is not denied. It is equally true that the same is not dated is also not denied. Section 76 Evidence Act 1950 is clear and it requires exh. "SP1" to be dated, in the absence of which it is inadmissible as certified copy. I hold therefore, exhs. "SP1" in both the applications inadmissible, as such.

I am mindful of s. 114(e) Evidence Act 1950, that the court may presume that judicial and official acts have been regularly performed. However, in view of his appointment being challenged, the officer concerned attempted to produce exh. "SP1" to prove his appointment. In view of my ruling that exh. "SP1" being inadmissible, it is my view that it has not been proved beyond a reasonable doubt that the police officer concerned was such designated officer under s. 73(3)(c) ISA.

But that is not the end of the matter, counsel for the respondent at this juncture applied for a short adjournment in order to file further affidavit to clarify the matter in dispute. In the further alternative, he urged upon the court under s. 425 Criminal Procedure Code (hereinafter referred to as CPC) to call such person to give evidence in order to arrive at a just decision.

Whether or not to allow an adjournment is the discretion of the court. In view of the application for adjournment made at such late stage of the proceedings and also in view of the nature of the application, the court declines to allow an adjournment.

It has been urged upon the court, to apply s. 425 Criminal Procedure Code to call in such additional evidence of a technical nature in order to arrive at a just decision. What was asked of the court was to summon a witness to testify as to cure the infirmity of exh. "SP1" in both the applications. The court declines to do so, being bound by the Supreme Court decision in the case of *Ng Hong Choon v. Timbalan Menteri Hal Ehwal Dalam Negeri & Anor* [1994] 4 CLJ 47; [1994] 3 MLJ 285 where the court has rejected a similar application under s. 425 CPC for additional evidence to be admitted.

For reasons aforesaid, the applications are allowed. Both the applicants are to be produced before this court on Monday 22 December 1997 at 2.30pm and to be set free.